

United States District Court  
Western District Of Michigan

FILED - GR

May 30, 2023 2:07 PM

CLERK OF COURT

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY:JMWB SCANNED BY: KB 1531

Larrence Avery,  
plaintiff

1). v. JOHNSON,  
2). JUNCK,  
Michigan Department Of Corrections Staff on behalf of "Food Service"  
In their Individual Capacities,

Defendants

2:23-cv-101

Maarten Vermaat  
U.S. Magistrate Judge

/ JURY TRIAL DEMANDED

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in this Complaint.

**I). Jurisdiction And Venue**

- 1). This is a Civil Action authorized by Title 42 U.S.C § 1983 to redress the Deprivation, Under Color of State Law of rights secured by the Constitution of the United States. This Court has proper Jurisdiction under 28 U.S.C § 1331 and 1333(a)(3).
- 2). The Western District Court has proper Venue Jurisdiction under 28 U.S.C § 1331 (b)(2) because it is where the events giving rise to this claim accrued.

**II). Plaintiff**

- 3). The Plaintiff, Larrence Avery, (hereinafter "Plaintiff") is/was at all times mentioned herein a prisoner of the Michigan Department of Corrections ("MDOC") Located at:Baraga Correctional Facility ("AMF") 13924 Wadaga Rd., Baraga, MI 49908.

4). The Plaintiff Seeks Redress in this Court for the violations of his Eighth and First Amendment Right of Cruel and Unusual Punishment and Retaliation by Defendant(s) Feeding Freezing Cold Beans and Meals that are required to be Hot, warm at a certain Temperature before Consuming Which has given plaintiff Ongoing Food Poisoning, and Defendants Retaliating on ~~Defendant~~ Plaintiff's Kites asking and Requesting Meals which are required to be ~~Hot~~ at a certain Degree to be warmed or atleast Hot, and not Freezing Cold. After Learning of the Grievances and Numerous of non Stop Kites sent from plaintiff Defendants deliberately continues to ignore and deny the Plaintiff's Hot meals.

### III ). Defendants

- 5). The Defendants ("Staff on the behalf of Food service") are /were employed as Food Services personnel here at Baraga Correctional Facility ("AMF") during the course of events alleged in this complaint. the Defendants are ~~not~~ identified due to Level V. Prisoners/Plaintiff is and are in a ~~Very~~ High Security Level where there is not Prisoner Movement Within the Facility to enter inside or around Prisoner Chow Hall.
- 6). Prisoners is/are receiving there Breakfast, Lunch, and Dinner inside there Housing Unit. Plaintiff Cannot have any Contact with Defendants or any access of Visible Communication besides by way of Kites to communicate. Defendants ~~are~~ all identified as any and all Staff who works on the Behalf of Food service.
- 7). Defendants (Food service) are accused of Deliberately refusing to provide the Plaintiff proper treatment of his religious ramadan Meal even after receiving Numerous Kites from plaintiff about Rotten Fruits and Super Cold Beans and Missing items which has been on going Continuously non Stop since Ramadan program Started.

8). Defendants are accused of violating Plaintiff's rights to be free from Retaliation where Defendants Verbally admitt to Continuously deny the Plaintiff's and all Muslims who participated in Ramadon Religious Program ~~not~~ "Meals that are required to be Hot/warm at a certain Degree to be Consumable, also inflicting cruel and unusual punishment when Plaintiff are supposed to be free from cruel and unusual punishment and Retaliation.

#### IV. Statement Of Facts

9). On March 26<sup>th</sup>, 2023 Plaintiff has notified all Correctional Officers Located in 3 Block Unit Administrative Segregation about the Super Cold Beans being served along with the Rotten Fruits which was not conditioned to be Consumable, by way of sending kites to the Unit Officers to Call, email, and inform Food Services that Plaintiff and all other prisoners participating in Ramadon have been complaining ~~repeatedly~~ about that issue since March 21<sup>st</sup>, 2023.

10). On March 27<sup>th</sup>, 2023 on Second Shift Located in Unit 3 Block C/o Thomas and Spiesal passed out Ramadon Bags at or around 4:58 PM. C/o Thomas gave Plaintiff his religious Ramadon Bag and Plaintiff Notice the Beans was Cold and ask the C/o Thomas to please call the Defendants to inform them that the Food served to Muslims are Cold and needs to be warmed and that its policy that Food that is required to be hot is supposed to be at a certain degree and C/o Thomas Stated he will Call and Send Email as a reminder.

11). On March 28 through April 5<sup>th</sup> 2023 Plaintiff has been receiving Ongoing and Continuous Rotten Fruits (Apples & Bananas) that are not Conditioned to eat due to sitting out for so long and the cold Beans being served to Plaintiff ~~and~~ and prisoners who participated in the Ramadon Religious Fast.

12). On April 6<sup>th</sup> 2023 Plaintiff filed a grievance on Defendants and also written a kite warning and informing Defendants that he will write grievance if Food Service (Defendants) doesn't warm Food (Beans) that's required to be hot so it will be consumable to prisoners Fasting.

13). On April 7<sup>th</sup> through April 14<sup>th</sup> plaintiff and Muslim prisoners who participated in Ramadan Muslim Religious program did not receive any results about the Cold Beans which was continuously served along with the Rotten Apples and Beans which ~~is~~ is and Wasnt Conditioned to eat. being ~~forced~~ Continuously Forced on Prisoners.

14). On April 15, 2023 plaintiff filed another Grievance along with another prisoner known as prisoner # Johnson #807918 who kited Medical for Being poisoned by Eating the Cold Beans and Rotten Fruits Constantly ~~given~~ being given to plaintiff and When Second Shift Officers c/o Spiesal and c/o Bailey who made their first rounds at 3:00 pm plaintiff informed c/o Spiesal to call and send emails to Defendants (Food Service) about the Rotten Fruits and Cold Beans.

15). On April 16<sup>th</sup> through 17<sup>th</sup> of 2023 plaintiff was given his Ramadan Meal Bag which was passed by c/o Watt and Bailey had 4 of the Main Portions Missing out of his bag ~~which~~ ~~was~~ (Peanut Butter, Cake, Cookies, Slice of Turkey) and Was forced to eat Nasty Rotten Bananas and Apples with Super Cold Beans. After reporting to c/o Bailey and Watt that 4 items was missing out of Plaintiff's Bag and that issue did not get resolved also with the Cold Beans and Rotten fruits that was Unconditioned to eat.

16). On April 18<sup>th</sup>, 2023 plaintiff sent a kite to Medical Healthcare about his ~~Stomach~~ Stomach having non stop Sharp pains and also having a hard time digesting Food which he ate. Plaintiff also filed another Grievance on Step I (one)

17). On April 19 through April 21<sup>st</sup> of 2023 plaintiff issues still went Unresolved even all the way up until the end of Ramadan.

18). On April 26<sup>th</sup> 2023 at or around 7:43 Am plaintiff was Called out to be seen by Nurse for Sharp Stomach pains that has been ongoing for 3½ weeks. Plaintiff explained his

his symptoms are very serious. And Plaintiff explained to him that he has to stop eating Cold Food that supposed to be hot and the Rotten Fruits he was forced to eat.

19). Plaintiff filed his 3rd Step one Grievance due to not receiving any response and also the Food being Served to him from Defendants poisoned his insides of his Stomach. And Plaintiff still didnt receive any responses on ~~on~~ his first Grievance of Step II and also ~~on~~ No responses on his other Grievances which remains to be ignored.

## V. EXHAUSTION OF REMEDIES

20). As Stated in all paragraphs, The plaintiff filed over 3 (three) Grievances in the form of Step ones and only one Step one was answered but the Step II of plaintiff Grievance remain ignored. See Grievance Identification #: AMF 2304 474272  
Plaintiff ~~the~~ other Step One Grievances was ignored and not Answerd.

21). A short while after filing the first 3 grievances of Step I and experiencing adverse action behind it from Defendants "Food Service" , the plaintiff filed another Step I Grievance against Food Service and Grievance Coordinator for retaliation by refusing to answer Kites and Grievances so that Plaintiff and other Muslim prisoners can get Warm Beans and Fresh fruits that are Conditioned to eat but instead ended up getting Food poisoned. 3 Step one Grievances was never processed besides the First step one of the 3 Grievances but Step II Grievance remained unprocessed by MDOC Staff even after sending numerous Kites to the Grievance Coordinator concerning the Matter and requesting Step III Form(s) for One of the processed grievance, but to no avail.

22). Due to Administrative interference with the grievance process The plaintiff administrative remedies were not made available to him, therefore, he is considered to have exhausted his remedies.

## VI. Legal Claims

23). The plaintiff realleges and incorporates, by reference all paragraphs 1-22 as though fully stated.

24). The actions of Defendants as alleged in this Complaint, constitutes as a violation of his right to adequate Treatment of his religious Ramadon Meal as a Muslim participating in a ramadon program being Administrated by MDOC and adequate treatment by Food Service. The adverse actions against the ~~Defendant~~ plaintiff filed a grievance against Healthcare Staff this is against plaintiff First and Eighth Amendment Right to be free from retaliation and Crue and USUAL punishment, and free from retaliation to petition the Government.

## VII. Relief Requested

Wherefore, the plaintiff humbly request for this Honorable Court to grant the following relief: A) Award Compensatory damages in favor of the plaintiff in the following amount:

1. \$250,000.00 Jointly and Severally against all defendants for deliberately denying the Plaintiff Fresh Conditioned Food/Fruits that required to be hot/warm and Fruits that required to be Conditioned to consumed as alleged in the Complaint in violation of his eighth Amendment right

2. \$ 50,000.00 Jointly and Severally against all Defendants for ~~deliberately~~  
~~taking~~ taking adverse actions against the Plaintiff for filing Grievances  
and sending kites as alleged in the Complaint, in violation of his  
Eighth Amendment right

B). Award Punitive Damages in favor of the Plaintiff in the following  
Amount:

1. \$ 100,000.00 Jointly and Severally against all defendants for deliberately  
denying the Plaintiff Adequate Treatment, as alleged in the Complaint  
in violation of his eighth Amendment right

2. \$ 50,000.00 Jointly and Severally against all defendants for taking  
adverse actions against the Plaintiff for filing Grievances and sending  
Kites of Request, as alleged in this Complaint, in violation of his  
eighth Amendment.

C). Award Nominal Damages in favor of the Plaintiff in the following  
Amount:

1. ~~\$~~ 10,000.00 Jointly and Severally against all defendants.

D). Award all Cost and Fees to the Plaintiff against the defendants  
for having ~~had~~ to file this action.

E). Award any other relief that this Court deems equitable and  
just in favor of the Plaintiff.

## VIII. Verification

I, Lawrence Avery, Pursuant to title 28 U.S.C § 1746, declare Under Penalty of Perjury, that I have examined the contents of this Complaint and that the statements made are true and correct, and I am competent and willing to testify in court to the truthfulness of the statements made herein this Complaint.

Dated: \_\_\_\_\_

Truthfully Submitted

S: Lawrence Avery

962037

Lawrence Avery

Larrence D. Avery J.R  
965657

13924 WADAGA RD  
BARAGA MI, 49908  
BARAGA MAX. facility

U.S W  
399 ft  
110 Mi  
Grand

FIRST-CLASS

US POSTAGE<sup>TM</sup> PITNEY BOWES



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